

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	File No. EB-07-SE-373
	)	
NOVA Chemicals, Inc.	)	Acct. No. 200832100077
	)	
	)	FRN No. 0002848208

**ORDER**

**Adopted:** September 3, 2008

**Released:** September 5, 2008

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau ("Bureau") and NOVA Chemicals, Inc. ("NOVA"). The Consent Decree terminates an investigation by the Bureau against NOVA for possible violations of section 301 of the Communications Act of 1934, as amended, ("Act")<sup>1</sup> and sections 1.903(a) and 1.949(a) of the Commission's Rules ("Rules")<sup>2</sup> regarding the operation of its Private Land Mobile Radio Service ("PLMRS") station WPLH775 without Commission authority and its failure to file a timely renewal application for the station.

2. The Bureau and NOVA have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether NOVA possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Communications Act of 1934, as amended,<sup>3</sup> and sections 0.111 and 0.311 of the Commission's Rules,<sup>4</sup> the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS CANCELLED**.

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 C.F.R. §§ 1.903(a) and 1.949(a).

<sup>3</sup> 47 U.S.C. § 154(i), 503(b).

<sup>4</sup> 47 C.F.R. §§ 0.111, 0.311.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Jeffrey E. Rummel, Esq., Counsel for NOVA Chemicals Inc., Arent Fox LLP, 1050 Connecticut Avenue, NW, Washington, DC 20036-5339 and Jack S. Mustoe, Senior Vice President, Chief Legal Officer and Corporate Secretary, NOVA Chemicals Inc., US Operating Center, 1550 Corapolis Heights Road, Moon Township, PA 15108.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau

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NOVA Chemicals, Inc.	)	Acct. No. 200832100077
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**CONSENT DECREE**

The Enforcement Bureau (“Bureau”) and NOVA Chemicals, Inc. (“NOVA”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether NOVA violated section 301 of the Communications Act of 1934, as amended, (“Act”)<sup>1</sup> and sections 1.903(a) and 1.949(a) of the Commission’s Rules (“Rules”)<sup>2</sup> regarding the operation of its Private Land Mobile Radio Service (“PLMRS”) station without Commission authority and its failure to file a timely renewal application for the station.

**I. DEFINITIONS**

1. For the purposes of this Consent Decree, the following definitions shall apply:
  - (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
  - (b) “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
  - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
  - (d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
  - (e) “Compliance Plan” means the program described in this Consent Decree at paragraph 8.
  - (f) “Effective Date” means the date on which the Bureau releases the Adopting Order.
  - (g) “Investigation” means the investigation commenced by the Bureau’s March 28, 2008 Letter of Inquiry<sup>3</sup> (“LOI”) regarding whether NOVA violated section 301 of Act<sup>4</sup> and sections 1.903(a) and 1.949(a) of the Rules<sup>5</sup> by operating its PLMRS

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 C.F.R. §§ 1.903(a) and 1.949(a).

<sup>3</sup> Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Jack S. Mustoe, Senior Vice President, Chief Legal Officer and Corporate Secretary, Nova Chemicals Inc. (March 28, 2008) (“March 28, 2008 LOI”).

<sup>4</sup> 47 U.S.C. § 301.

station without Commission authority and by failing to file a timely renewal application for the station.

- (h) “NOVA” means NOVA Chemicals, Inc. and its predecessors-in-interest and successors-in-interest.
- (i) “Parties” means NOVA and the Bureau.
- (j) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

## II. BACKGROUND

2. Pursuant to section 301 of the Act and section 1.903(a) of the Rules, the use or operation of any apparatus for the transmission of energy or communications or signals by a wireless radio station is prohibited except under, and in accordance with, a Commission authorization.<sup>6</sup> Additionally, section 1.949(a) of the Rules requires that licensees file renewal applications for wireless radio stations, “no later than the expiration date of the authorization for which renewal is sought, and no sooner than 90 days prior to expiration.”<sup>7</sup> Absent a timely filed renewal application, a wireless radio station license automatically terminates.<sup>8</sup>

3. On March 28, 2008, the Bureau issued a LOI to NOVA.<sup>9</sup> The March 28, 2008 LOI directed NOVA, among other things, to submit a sworn written response to a series of questions relating to the unauthorized operation of its PLMRS station WPLH775 without Commission authority and for failing to file a timely renewal application for the station. NOVA responded to the March 28, 2008 LOI on April 25, 2008.<sup>10</sup>

## III. TERMS OF AGREEMENT

4. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

5. **Jurisdiction.** NOVA agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

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<sup>5</sup> 47 C.F.R. §§ 1.903(a) and 1.949(a).

<sup>6</sup> 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

<sup>7</sup> 47 C.F.R. § 1.949(a).

<sup>8</sup> 47 C.F.R. § 1.955(a)(1).

<sup>9</sup> See March 28, 2008 LOI.

<sup>10</sup> Letter from Jeffrey E. Rummel, Esq., Counsel for Nova Chemicals Inc., to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (April 25, 2008) (“April 25, 2008 LOI Response”).

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its investigation. In consideration for the termination of said investigation, NOVA agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this investigation through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against NOVA concerning the matters that were the subject of the investigation. The Bureau also agrees that it will not use the facts developed in this investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against NOVA with respect to NOVA's basic qualifications, including its character qualifications, to be a Commission licensee.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, NOVA agrees to create within 30 days of the Effective Date a Compliance Plan related to future compliance with the Act, the Commission's Rules, and the Commission's Orders. The Plan will include the following components:

- (a) **Database.** Within thirty (30) days of the Effective Date, NOVA shall generate information about the Company's telecommunications licenses and practices. This information shall be maintained and periodically updated in the form of an electronic database or a facilities listing. This information shall be made available to the Company's personnel who are responsible for maintaining the telecommunications licenses. The Company, either directly or through its outside telecommunications counsel, shall maintain a tickler listing to prompt the timely filing of license renewal applications.
- (b) **Training.** Within ninety (90) days of the Effective Date, parties responsible for the purchase, acquisition, and sale of NOVA's radio equipment and/or entities or properties which may include telecommunications assets shall be trained about the timely filing of radio station applications, modifications to existing radio facilities, renewal of radio licenses, and applications for prior consent to changes in ownership or control of telecommunications licenses. Outside telecommunications counsel will supplement this training by memoranda and other updates on a periodic basis and when necessary to keep the Company informed of Commission policy and regulatory compliance requirements.
- (c) **Compliance Officer.** NOVA will appoint a Compliance Officer who will be responsible for overseeing NOVA's compliance with this Compliance Plan and applicable FCC requirements.
- (d) **Compliance Reports.** NOVA will file compliance reports with the Commission ninety (90) days after the Effective Date, six months after the Effective Date, and twelve months after the Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of NOVA, stating that the

officer has personal knowledge that NOVA has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer's compliance certification. All compliance reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. All reports shall also be submitted electronically to Ricardo M. Durham, Senior Deputy Chief, Enforcement Bureau, Spectrum Enforcement Division, Ricardo.Durham @fcc.gov, and Nissa Laughner, Attorney Advisor, Enforcement Bureau, Spectrum Enforcement Division, Nissa.Laughner@fcc.gov.

- (e) **Termination Date.** Unless stated otherwise, the requirements of this Consent Decree will expire twelve months after the Effective Date.

9. **Voluntary Contribution.** NOVA agrees that it will make a voluntary contribution to the United States Treasury in the amount of seven thousand five hundred dollars (\$7, 500). The payment will be made within thirty days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the Order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). NOVA will also send electronic notification on the date said payment is made to Ricardo.Durham @fcc.gov and Nissa.Laughner@fcc.gov.

10. **Waivers.** NOVA waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues the Adopting Order without change, addition, modification, or deletion. NOVA shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither NOVA nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and NOVA shall waive any statutory right to a trial *de novo*. NOVA hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

11. **Severability.** The Parties agree that if any of the provisions of the Adopting Order or the Consent Decree shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Adopting Order or Consent Decree, but rather the entire Adopting Order or Consent Decree shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

12. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which NOVA does not expressly consent) that provision will be superseded by such Commission rule or Order.

13. **Successors and Assigns.** NOVA agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

14. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission's Rules and Orders.

15. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

16. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

17. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

18. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

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Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau

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Date

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William C. Mitchell  
Vice President, Legal  
NOVA Chemicals, Inc.

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Date

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J. Alan Crittenden  
Vice President, Legal  
NOVA Chemicals, Inc.

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Date